

ORIGINAL



0000100131

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2009 JUN 30 A 9: 29

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUN 30 2009

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF
WICKENBURG RANCH WATER, LLC
(FORMERLY CDC WICKENBURG WATER,
LLC) FOR APPROVAL OF A RATE
ADJUSTMENT.

DOCKET NO. W-03994A-07-0657

PROCEDURAL ORDER

BY THE COMMISSION:

On November 20, 2007, Wickenburg Ranch Water, LLC ("Wickenburg Ranch") filed with the Arizona Corporation Commission ("Commission") an Application to Adjust Rates.

On February 12, 2009, the Commission issued Decision No. 70741.

On February 26, 2009, Wickenburg Ranch filed an Application for Rehearing specifically requesting that certain portions of Decision No. 70741 be deleted and that one conclusion of law be revised.

On March 16, 2009, the Commission issued Decision No. 70832, granting Wickenburg Ranch's Application for Rehearing and directing the Hearing Division to conduct a procedural conference at which recommendations as to the processes to be followed for the rehearing could be presented. Such a procedural conference was held on April 22, 2009, and it was determined that an evidentiary hearing would be held.

On June 15 and 29, 2009, an evidentiary hearing was held at the Commission's offices in Phoenix, Arizona. Wickenburg Ranch and the Commission's Utilities Division Staff ("Staff") appeared through counsel and presented testimony and documentary evidence. At the conclusion of the hearing, Wickenburg Ranch and Staff were directed to file post-hearing briefs concerning a number of legal issues by August 14, 2009, and to file reply briefs by September 4, 2009. The purpose of this Procedural Order is to memorialize the legal issues to be addressed in those briefs.

1 IT IS THEREFORE ORDERED that **Wickenburg Ranch and Staff** shall, by **August 14,**
2 **2009, file post-hearing briefs** addressing the following legal issues and **including specific citations**
3 **to legal authority** to support their positions:

- 4 • Staff has asserted that the “contested provisions” resolve intermediate issues necessary to
5 set just and reasonable rates. Both parties shall analyze why this assertion is or is not true.
- 6 • Staff has asserted that rainwater that has not yet reached an actual stream, canyon, or
7 ravine or body of water is not subject to statutory restrictions on appropriation. Both
8 parties shall analyze whether rainwater captured in a catchment system is subject to
9 restrictions on appropriation of water.
- 10 • Wickenburg Ranch has raised the possibility that rainwater catchment systems would
11 result in liability under A.R.S. § 45-112(A)(7). Both parties shall analyze why
12 landowners in Wickenburg Ranch would or would not be liable under this statute if they
13 have rainwater catchment systems.
- 14 • Wickenburg Ranch has raised the spectre of the Gila River System litigation. Both parties
15 shall explain what this litigation deals with and why imposing a requirement for rainwater
16 catchments would or would not necessitate landowner participation in the litigation.
- 17 • Wickenburg Ranch has asserted that ADWR’s jurisdiction preempts the field of regulating
18 groundwater in Arizona and that caselaw (*e.g., Gamet v. Glenn*) establishes that the
19 Commission has no jurisdiction to regulate individual water rights or uses. Both parties
20 shall analyze the Commission’s jurisdiction in the area of regulating groundwater use in
21 Arizona.
- 22 • Wickenburg Ranch initially asserted that the Commission should not impose the
23 requirements in the “contested provisions” without first promulgating rules that impose
24 them. Both parties shall analyze whether the Commission could promulgate rules
25 imposing the requirements in the contested provisions (*i.e.*, whether the Commission has
26 sufficient legal authority to do so).
- 27 • Wickenburg Ranch has asserted that it will be entitled to attorney’s fees and costs under
28 several authorities, including the “private attorney general doctrine,” if the Decision is not
amended and a successful appeal occurs. Both parties shall analyze this assertion and the
underlying authorities.
- Wickenburg Ranch has asserted that it has been denied both procedural due process and
substantive due process. Both parties shall analyze whether due process was originally
denied, whether the rehearing process has remedied any prior due process problems,
whether any due process problems remain, and what can be done to remedy any remaining
due process problems.
- Finally, Wickenburg Ranch has asserted that Staff, rather than Wickenburg Ranch, has the
burden of proof in this rehearing. Both parties shall analyze why this assertion is or is not
true.

24 IT IS FURTHER ORDERED that **Wickenburg Ranch and Staff** shall, by **September 4,**
25 **2009, file reply briefs** responding to each other’s post-hearing briefs.

26 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
27 Communications) applies to this proceeding and shall remain in effect until the Commission's
28 Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the Rules of the Arizona Supreme Court). Representation before the Commission includes appearing at all hearings, procedural conferences, and Open Meetings at which the matter is scheduled for discussion, unless counsel has previously been granted permission to withdraw by the Administrative Law Judge or the Commission.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 30th day of June, 2009.



SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 30th day of June, 2009, to:

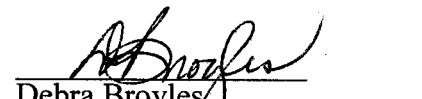
Steve Wene
MOYES STOREY LAW OFFICES
1850 North Central Avenue, Suite 1100
Phoenix, Arizona 85004-4541
Attorney for Wickenburg Ranch Water, LLC

Janice Alward, Chief Counsel
Janet Wagner, Assistant Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

David Green
WICKENBURG RANCH WATER, LLC
C/O M3 Builders
4222 East Camelback Road, H100
Phoenix, Arizona 86018-2721

Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

By:


Debra Broyles
Secretary to Sarah N. Harpring